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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,387	10/16/2001	Nobuo Takahashi	Q66634	3087

7590

12/06/2005

SUGHRUE, MION, ZINN, MACPEAK & SEAS  
2100 Pennsylvania Avenue, N.W.  
Washington, DC 20037-3202

EXAMINER
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KRAMER, JAMES A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/977,387

Applicant(s)

TAKAHASHI, NOBUO

Examiner

James A. Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/31/05 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has amended the independent claims to better define that the total order quantity, used to determine the selling price, includes both previously accepted orders and subsequently accepted orders. However, the claims fail to specifically recite when the price is determined. Specifically, if the present invention determines the final price at the same time the user places the order, then how could subsequently accepted orders be used in the calculation?

Examiner recommends amending the claims to distinctly claim that the final sales price is determined after acceptance of orders of said product for said delivery date is closed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halbert in view of Kuelbs.

With respect to **claim 1**, Halbert teaches placing an order at the buyer terminal (column 7, lines 13-15) by sending a product identifier which specifies a product to be ordered, an order quantity of the product and a delivery date for delivery of the product to the order-receiving terminal (e-commerce server – column 7, lines 22-26) (see for example column 8, line 61 through column 7, line 42).

Examiner notes that when a user of Halbert selects a co-op to join he/she specifies the product to be ordered, a quantity and a delivery date. Specifically Examiner interprets the delivery date of Halbert as the closing date/time for the co-op.

With further respect to **claim 1**, Halbert teaches determining, at the close of the co-op by the order-receiving terminal (e-commerce server) a final selling price of the product based on standard selling price and a total order quantity where the total order quantity includes all order placed for the product before the acceptance of orders of product for delivery date is closed (this

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includes order made previous to users order and subsequent to users order) (see for example column 9, lines 43-49).

With further respect to **claim 1**, Halbert teaches sending the final selling price which is determined to, among the plurality of supplier terminals, a product supplier terminal of a product supplier which provides the product which is ordered and receiving, at the product supplier terminal the final selling price which is sent from the order-receiving terminal (see for example column 9, lines 50-54).

With respect to **claim 4**, Halbert teaches wherein the order-receiving terminal determines the final selling price for the order such that the selling price is less expensive for a larger total order quantity (see for example column 7, lines 51-54).

With respect to **claim 5**, Halbert teaches the product supplier terminal sends product information to the order-receiving center terminal, which includes the standard selling price of the product to be sold, a price scheme (price curve) including discount rates based on total order quantities and schedule information including delivery dates and dates for closing order acceptance for the product (see for example column 7, lines 45-63). Examiner notes that the price curve of Halbert represents Applicant's price scheme.

With respect to **claims 1, 4 and 5**, Halbert does not teach the final selling price determined based on period of time of order where the longer the period of time the lower the

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selling price, nor a price scheme including discounts rates based on periods from the present time to delivery dates.

Kuelbs teaches a method of producing, selling and distributing articles of manufacture which financially rewards early buyers of products with the lowest price, and which provides a disincentive to the later purchasers with a price which increases generally as the risk and/or cost increases to the manufacturer. This is done in order to lower the risks and costs to the manufacturers (see for example column 3, lines 7-14).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the price curves of Halbert to include financial incentives to early entrants to the co-ops as taught by Kuelbs. One of ordinary skill in the art would have been motivated to modify the references in order to minimize the risks and costs to the sellers.

### ***Response to Arguments***


Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (571) 272 6783. The examiner can normally be reached on Monday - Friday (8AM - 5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272 6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James A. Kramer  
Examiner  
Art Unit 3627

11/30/05

jak